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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

EXAMINER
NGO, NGUYEN HOANG

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AAMOD KHANDEKAR,
ALEXEI GOROKHOV, and RAJAT PRAKASH

Appeal 2016-000864[1]
Application 11/852,565
Technology Center 2400

Before JUSTIN BUSCH, NORMAN H. BEAMER, and ALEX S. YAP, *Administrative Patent Judges*.

YAP, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–42 and 62, which are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellants, the real party in interest is QUALCOMM Incorporated. (App. Br. 3.)

STATEMENT OF THE CASE

Introduction

Appellants' invention "relates generally to wireless communications, and more particularly subband scheduling and power amplifier backoff." (Sept. 10, 2007 Specification ("Spec.") ¶ 1.) Claim 1 is representative and is reproduced below:

1. A method of mitigating non-linear distortion on a spectral mask margin, comprising:

   scheduling, based upon power limitation information including a QoS level, a first mobile device on an inner subband of an allocated spectrum, wherein the power limitation information indicates the first mobile device is power-limited at maximum transmit power due to interference constraints, and wherein the inner subband is not at an edge of the allocated spectrum; and

   scheduling a second mobile device on an edge subband at an edge of the allocated spectrum after scheduling the first mobile device.

Prior Art and Rejection on Appeal

The following table lists the prior art relied upon by the Examiner in rejecting the claims on appeal:

Love et al. ("Love")	US 2008/0025254 Al	Jan. 31, 2008
Alpert et al. ("Alpert")	US 2008/0291831 Al	Nov. 27, 2008

Claims 1–42 and 62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Love in view of Alpert. (*See* Final Office Action (mailed Jan. 14, 2015) ("Final Act.") 2–7.)

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments that the Examiner has erred. We are not persuaded that the Examiner erred in rejecting claims 1–42 and 62.

With respect to claim 1, the Examiner finds that while Love "fails to specifically disclose that the power information specifically includes a QoS level and wherein the power limitation information indicates the first mobile device is power-limited at maximum transmit power due to interference constraints," Alpert teaches or suggests the use of QoS (*i.e.*, Quality of Service). (Final Act. 3–4.) Appellants disagree and contend that neither Love (App. Br. 10–15; Reply 2–5) nor Alpert (App. Br. 15–18) teaches or suggests the use of QoS.

Appellants have not persuaded us that the Examiner erred. With regard to Appellants' contention that Love fails to teach or suggest the use of QoS, we note that the Examiner is not relying on Love for the use of QoS. (Final Act. 3–4, 7–8.) Appellants further argue that "Love also fails to *explicitly* describe that the power limitation information indicates the first mobile device is power-limited at maximum transmit power due to interference constraints." (App. Br. 14–15.) Other than contending that the portions of Love cited by the Examiner "describe[] something different than the distinguishing features of the Appellants' claims," Appellants, however, do not explain why (except for contending that Love fails to teach or suggest the use of QoS) the Examiner's detailed findings are incorrect. (App. Br. 10–15.) We note that mere attorney argument and a conclusory statement that is unsupported by factual evidence is entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736

F.2d 699, 705 (Fed. Cir. 1984). Importantly, we agree with, and adopt as our own, the Examiner's detailed findings regarding this limitation. (Final Act. 3–4, 7–8; Ans. 7–9.)

With regard to Appellants' contention regarding Alpert, Appellants have similarly not persuaded us that the Examiner erred. Appellants contend that Alpert fails to teach or suggest "scheduling, based upon power limitation information including a QoS level, a first mobile device . . . , wherein the power limitation information indicates the first mobile device is power-limited at maximum transmit power due to interference constraints" because QoS level is not used to calculate Alpert's "reporting ratio." (App. Br. 15–18; *see also* Reply 5–7.) In other words, according to Appellants, the QoS level in Alpert is not used for "scheduling transmission in different subbands" as claimed. (*Id.* at 18.)

"[O]ne cannot show non-obviousness[, however,] by attacking references individually where, as here, the rejections are based on combinations of references." *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Specifically, the Examiner finds the combination of Love and Alpert teaches or suggests "scheduling, based upon power limitation information including a QoS level, a first mobile device . . . , wherein the power limitation information indicates the first mobile device is power-limited at maximum transmit power due to interference constraints." (Final Act. 3–4, 7–8.) We agree with the Examiner's finding that Love teaches or suggests "scheduling, based upon power limitation information" and Alpert teaches or suggests "that the power information specifically includes a QoS level and wherein the power limitation information indicates the first mobile device is power-limited at maximum transmit power due to interference

constraints" and it would have been obvious to one of ordinary skill in the art:

> [T]o incorporate the concept of providing updating information including power limitation information including a QoS level and maximum transmit power as disclosed by Alpert into the method of spectrum emission level variation in schedulable wireless communication terminals involving scheduling terminals at the carrier band edge and other terminals excluding the carrier band edge as disclosed by Love in order to correctly and efficiently obtain the proper information needed for scheduling of terminals.

(Final Act. 3–4.)

For the foregoing reasons, we are not persuaded of Examiner error in the rejection of claim 1. Thus, we sustain the 35 U.S.C. § 103 rejection of claim 1, as well as independent claims 14, 15, 28, and 31, which are not argued separately. (App. Br. 9–19.) We also sustain the 35 U.S.C. § 103 rejection of claims 2–13, 16–27, 29, 30, 32–42 and 62, which depend on one of claims 1, 15, 28, or 31, and are not argued separately. (*Id.*)

DECISION

The decision of the Examiner to reject claims 1–42 and 62 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED